

Minutes of the HSE AALA Management Board (AALA MB)

Seventh Meeting – 30 September 2010 – 11.00

Hockley Room, HSE, 1 Hagley Road, Birmingham

In attendance: David Ashton – HSE, Chair AALA MB
Alistair McNab – HSE Vice-Chair of AALA MB
Clare McNicholas – HSE Policy
Gavin Howat – HSE FOD
Ian McMorris – Independent member AALA MB
John-Paul Lawrence – Local Government Regulation
Sir Brooke Boothby – TQS/AALS
John Walsh-Heron – TQS/AALS
Marcus Bailie – TQS/AALS
Dawn Hepworth – HSE Policy (minutes)

Apologies: Martin Elliott – Dept for Education
John Price – DWP
Gordon Currie – Scottish Government
Vincent Doyle – Welsh Assembly Government
Brain Chapman – Independent member AALA MB

1. Welcome and introductions

- 1.1 David Ashton welcomed all those in attendance. He explained the reason why Clare McNicholas was attending in place of Marion Evans and extended the Board's best wishes to Marion.

2. Minutes and Action Points from last meeting

2.1 Inspection Initiatives (para 2.1)

Trekking had been agreed as a possible activity for a targeted inspection initiative. Further discussion on this issue will take place later in the meeting.

2.2 Gorge jumping Fatal Accident Inquiry (para 2.5)

A press briefing had been provided to Central Office of Inspection Scotland.

2.3 Meeting with DCSF (now DfE) (para 2.6)

A meeting had been held in August.

2.4 Outstanding actions from AALS Internal Audit Report (para 2.7)

All outstanding actions cleared.

2.5 Status of British Stand-Up Paddling Association (BSUPA) (para 3.2)

It was clarified that BSUPA is one of several organisations that provide training to instructors on Stand-Up Paddling. BSUPA is not a recognised National Governing Body.

2.6 Policy on whether a licence-holder should, within a specified time, be required to provide an activity for which it is licensed (para 3.3)

This item remained outstanding as a consequence of developments in government.

2.7 Practice of requesting licence-holders to inform TQS when a caving activity is scheduled (para 3.3)

This has been delivered as part of the Caving Inspection Initiative.

2.8 Production of a “lessons learned” report on the Caving Inspection Initiative (para 3.3)

This has been delivered in the form of a paper dated 13 July 2010

2.9 Meeting with Scottish Government to discuss issues arising from the FAI determination

Remains outstanding – matter will be taken forward following the release of the report by Lord Young.

2.10 Weblink to the Water Rescue Study to be made available to the AALA MB

Action completed.

2.11 Review and renew the memorandum of understanding with DCSF/DfE

Action on hold pending release of the report by Lord Young

2.12 Feedback from the Association of Heads of Centres March 2010 conference

See below

2.13 Policy and procedure for renewal of RYA licences to be determined

Action cleared. Licence renewal applications are already being processed.

2.14 Improve transparency of the AALA by including reports and other relevant information on the AALA website

On-going and continues to progress.

2.15 AALA to seek exclusion from the tacit acceptance provision in the EU Services Directorate

Action completed.

3 Lord Young Review of Health and Safety Laws and the Compensation Culture

HSE expects that the report on Lord Young's review will be released on 15 October 2010 and if this date is to change, the AALA MB members and TQS will be informed. The Adventure Activities Licensing Authority is expected to be mentioned in the report and HSE expects that there will be a recommendation about the future management of adventure activities. Lord Young's report is also expected to receive a mention in the Leader's Speech at the Conservative Party conference.

It was clarified that, whatever recommendation is made, there will be an implementation plan published almost contemporaneously with Lord Young's report.

The issue of HSE engagement with TQS staff was discussed and it was agreed that the Chair and Vice-Chair of AALA will have a telephone conference with the Chair and Chief Executive of TQS on Monday 18 October.

Action: Dawn Hepworth

The next meeting of the AALS inspectors is scheduled for 15 December and it was agreed that the Chair and Vice-Chair of AALA would be extended an invitation to attend.

Action: TQS

4 TQS Reports

4.1 Finance and Staffing

Costs remain under control. Extra funding of £20k has been used to facilitate the additional costs related to the Caving Inspections. End of year accounts have been audited and confirm the financial reports.

4.2 Head of Inspection Report

Headlines – the number of licence-holders continues to increase in line with projections; there had been several actions on providers identified during inspections but all had been resolved.

The paper on Human Error is to be published in several sector publications, including those of NGBs. Workshops are also being planned which will tailor the messages in the paper to specific activities.

5 Accidents/Incidents/Investigations

5.1 Manchester Hole

A “not guilty” verdict had been delivered in the case against North Yorkshire County Council although the judge noted that the prosecution case was properly brought before the court.

A very informative report was circulated on the hydrology of Goydon Pot and Manchester Hole by Graham Mollard of the British Caving Association. AALS is working with British Caving Association and Bewerly Park to take forward some issues raised in the report.

NYCC is maintaining its position not to offer caving activities although some instructor caving activity has been undertaken.

AALS has re-visited Bewerly Park as part of the licence renewal process.

5.2 Uist Army Cadet Boat Capsize

A joint police/HSE investigation is in its advanced stages.

5.3 Kayak fatality on River Tay

The co-operation between the emergency services, local activity providers and volunteers involved in this tragedy has been cited as a model for effective search and rescue multi-agency team-working. There is further work under way to develop competence within the Fire and Rescue Service for rapid water rescue and also to make use of local resources/assets to facilitate successful rescues. Emergency scenarios are also being practised to develop on the multi-agency team-working, including engaging with police control rooms so that they have the knowledge to identify the best possible rescue option. This model is likely to roll out across Scotland in future.

Consideration will be given to the production of a “lessons learned” paper.

Action: Gavin Howat/Marcus Bailie

The Board noted that the RNLI has developed an emergency rescue system along the River Thames which makes use of local assets such as privately owned leisure boats which would be called upon in the event of an incident.

5.4 Laura McDairmant

The Sheriff’s determination was promulgated on 24 June 2010. The AALA MB noted that there were four recommendations for AALA/HSE:

1. *That a comprehensive review be undertaken by the Health and Safety Executive of the statutory scheme for the regulation of the provision of adventure activities to persons under the age of 18 years set up under the terms of the Activity Centres (Young Persons’ Safety) Act 1995 and the regulations of 1996 and 2004 made under that act. The review should commence as soon as*

reasonably practicable and should address, amongst any other relevant issues, the following;

- (i) Whether any licensing scheme should be administered by a single authority and if so, which authority should have that responsibility;*
 - (ii) Whether any licensing scheme should encompass all the adventure activities engaged in at the facilities operated by providers rather than specific categories of activity;*
 - (iii) Whether or not local authorities should retain the responsibility for the inspection and enforcement of the statutory requirements for health and safety in relation to adventure activities;*
 - (iv) If the regulation of providers of adventure activities is to be administered by separate authorities, what system can be put in place to ensure effective demarcation of responsibilities and liaison between the authorities;*
 - (v) The guidance given to any licensing or enforcement authorities on their duties to inspect the providers of adventure activities to young persons;*
 - (vi) The training and level of qualifications appropriate for persons involved in the management and delivery of adventure activities to young persons.*
- 2. That the Health and Safety Executive require all providers of adventure activities requiring a licence under the Activity Centres (Young Persons' Safety) Act 1995 and the Adventures Activities Licensing Regulations 2004, to include in any application for a licence details of all adventure activities provided to persons under the age of 18 years. This requirement should be introduced without delay.*
 - 3. That the Health and Safety Executive issue clear guidance to local authorities on the extent of their statutory responsibilities under health and safety legislation for the inspection of providers of facilities for adventure activities to persons under the age of 18 years. This guidance should be issued without delay.*
 - 4. That the Health and Safety Executive review the present guidance and advice to local authorities contained within Local Authority Circular 47/15 and Local Authority Circular 47/21 and issue a further circular or circulars containing clear guidance on the responsibility of local authorities for the inspection of adventure activities engaged in by young persons, where such activities fall out with the inspection scheme of A.A.L.A. This review should be conducted as soon as is reasonably practicable,*

The AALA MB noted that the determination reflected the HSE submission given at the Inquiry. Whilst the determination has no legal standing and places no obligation on HSE to act on its recommendations, it is however normal practice for HSE formally to respond to recommendations. It was agreed that an interim response would be issued explaining that a formal response would be delivered following the publication of Lord Young's review.

Action: Alistair McNab

All elements of recommendation 1 are on hold pending Lord Young's review.

The AALA MB agreed that there is already in place a good arrangement to satisfy recommendation 2. As part of the process of considering an application for a licence, the AALS Inspector at the inspection visit will:

- Establish the full range of activities being provided at the centre; and
- Seek assurance that the provider is aware of all of the activities being delivered in order to demonstrate the culture of safety overall.

The AALA MB was also informed that AALS is exploring how the Abernethy Trust centre manager came to be unaware that the gorge-jumping activity was taking place at the centre. It was also noted and welcomed that the Abernethy Trust has prepared a “lessons learned” report into the tragedy.

With regard to recommendations 3 and 4, the AALA MB was informed that the re-write of the guidance for local authorities is work in progress and it was agreed that AALS will be consulted in due course. A revised draft will be available by 5 November 2010.

Action: Gavin Howat/John-Paul Lawrence

A revision of the HSE Operational Circular will also be required in due course.

Action: Gavin Howat

6 Targeted Inspection Initiatives

- 6.1.1 The AALA MB considered the report presented by Sir Brooke Boothby on the caving inspection initiative. Some providers were licensed to provide caving but may not have provided that for several years and so inspection of caving had not been possible. There was a discussion as to whether it would be appropriate to have evidence of continuing competence and on that basis not to license an activity that had not been provided for several years. The AALA MB felt that this was not a defensible position on the basis that an inspector can be satisfied, through other means, about the safety of a licensable activity without having observed that activity.
- 6.1.2 As a result of the announcement of Lord Young’s review and doubts over future funding levels, the development of a matrix to identify future targeting of inspections had been postponed.
- 6.1.3 Trekking has however been identified as an activity which could benefit from some targeted inspections. A very small percentage of providers licensed for trekking, 6%, had never had trekking observed. The AALS suggested that to observe this 6% of providers would not have any budget implications although there may be some logistical challenges to be overcome. The AALA MB could not commit to any additional funding or resources at present given the forthcoming Spending Review and this would be reviewed by the next AALA MB meeting.

Action: David Ashton

7 Feedback from the AHOEC conference

- 7.1 The AALA MB were informed that many centres, particularly those managed by Local Education Authorities, are under pressure to reduce costs or face the

possibility of closure. Some centre heads were already considering an increase in fees and reductions in staffing in a bid to become self-financing within 4 years.

- 7.2 The licensing scheme appears to have support and credibility, due largely to the experience and quality of the AALS inspectors. The conference had considered the pros and cons of the current scheme and these are listed in a letter to the Chair of the AALA MB which is to be circulated to the AALA MB members.
Action: Dawn Hepworth

- 7.2 The AALA MB was also told about the Oxfordshire Outdoor Learning Festival which had taken place 24 and 25 September. 1600 visitors had attended over the two days.

8 Issues for Local Authorities (Local Government Regulation)

- 8.1 Some Scottish local authorities had made enquiries about whether the Local Authority Circular (LAC) was being updated. It was agreed that the LAC needs to clarify that the low-risk activities and non-licensable activities of providers for which local authorities have enforcement responsibility will fall for enforcement by those local authorities.
Action: Gavin Howat/John Paul Lawrence

9 Any other Business

- 9.1 The AALS Annual Report was presented to the AALA MB. Any comments to be submitted by end of 1 October. Once cleared, the report will be presented to the HSE Board.
Action: Dawn Hepworth
- 9.2 It was agreed that any relevant extracts from Lord Young's report would be circulated to the AALA MB.
Action: Dawn Hepworth
- Once Lord Young's recommendations are known, the AALA MB will consider, through correspondence, their interpretation and implications on the licensing regime.
Action: All AALA MB

10 Date of next meeting

Tuesday 29 March 2011 – 11.00am
Venue – HSE's offices in Birmingham